

SENATE BILL No. 314

DIGEST OF INTRODUCED BILL

Citations Affected: IC 35-38-1-7.1; IC 35-38-1-8.7.

Synopsis: Neighborhood impact statements. Allows a prosecuting attorney in a prosecution involving a controlled substance offense to submit a neighborhood impact statement describing the effect of the offense upon the neighborhood in which it was committed. Requires the court to consider the neighborhood impact statement when determining what sentence to impose for a controlled substance offense.

Effective: July 1, 2004.

Clark

January 12, 2004, read first time and referred to Committee on Judiciary.

C
o
p
y



Introduced

Second Regular Session 113th General Assembly (2004)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2003 Regular Session of the General Assembly.

SENATE BILL No. 314

A BILL FOR AN ACT to amend the Indiana Code concerning criminal law and procedure.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 35-38-1-7.1, AS AMENDED BY P.L.221-2003,
2 SECTION 16, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2004]: Sec. 7.1. (a) In determining what sentence to impose
4 for a crime, the court shall consider:

- 5 (1) the risk that the person will commit another crime;
- 6 (2) the nature and circumstances of the crime committed;
- 7 (3) the person's:
 - 8 (A) prior criminal record;
 - 9 (B) character; and
 - 10 (C) condition;
- 11 (4) whether the victim of the crime was less than twelve (12)
12 years of age or at least sixty-five (65) years of age;
- 13 (5) whether the person committed the offense in the presence or
14 within hearing of a person who is less than eighteen (18) years of
15 age who was not the victim of the offense;
- 16 (6) whether the person violated a protective order issued against
17 the person under IC 34-26-5 (or IC 31-1-11.5, IC 34-26-2, or

2004

IN 314—LS 6747/DI 69+



C
o
p
y

IC 34-4-5.1 before their repeal), a workplace violence restraining order issued against the person under IC 34-26-6, or a no contact order issued against the person; ~~and~~

(7) any oral or written statement made by a victim of the crime; **and**

(8) any neighborhood impact statement submitted under section 8.7 of this chapter with respect to a controlled substance offense.

(b) The court may consider the following factors as aggravating circumstances or as favoring imposing consecutive terms of imprisonment:

(1) The person has recently violated the conditions of any probation, parole, or pardon granted to the person.

(2) The person has a history of criminal or delinquent activity.

(3) The person is in need of correctional or rehabilitative treatment that can best be provided by commitment of the person to a penal facility.

(4) Imposition of a reduced sentence or suspension of the sentence and imposition of probation would depreciate the seriousness of the crime.

(5) The victim of the crime was less than twelve (12) years of age or at least sixty-five (65) years of age.

(6) The victim of the crime was mentally or physically infirm.

(7) The person committed a forcible felony while wearing a garment designed to resist the penetration of a bullet.

(8) The person committed a sex crime listed in subsection (e) and:

(A) the crime created an epidemiologically demonstrated risk of transmission of the human immunodeficiency virus (HIV) and involved the sex organ of one (1) person and the mouth, anus, or sex organ of another person;

(B) the person had knowledge that the person was a carrier of HIV; and

(C) the person had received risk counseling as described in subsection (g).

(9) The person committed an offense related to controlled substances listed in subsection (f) if:

(A) the offense involved:

(i) the delivery by any person to another person; or

(ii) the use by any person on another person;

of a contaminated sharp (as defined in IC 16-41-16-2) or other paraphernalia that creates an epidemiologically demonstrated risk of transmission of HIV by involving percutaneous contact;

C
o
p
y



- 1 (B) the person had knowledge that the person was a carrier of
 2 the human immunodeficiency virus (HIV); and
 3 (C) the person had received risk counseling as described in
 4 subsection (g).
- 5 (10) The person committed the offense in an area of a
 6 consolidated or second class city that is designated as a public
 7 safety improvement area by the Indiana criminal justice institute
 8 under IC 36-8-19.5.
- 9 (11) The injury to or death of the victim of the crime was the
 10 result of shaken baby syndrome (as defined in IC 16-41-40-2).
- 11 (12) Before the commission of the crime, the person administered
 12 to the victim of the crime, without the victim's knowledge, a
 13 sedating drug or a drug that had a hypnotic effect on the victim,
 14 or the person had knowledge that such a drug had been
 15 administered to the victim without the victim's knowledge.
- 16 (13) The person:
 17 (A) committed trafficking with an inmate under IC 35-44-3-9;
 18 and
 19 (B) is an employee of the penal facility.
- 20 (14) The person committed the offense in the presence or within
 21 hearing of a person who is less than eighteen (18) years of age
 22 who was not the victim of the offense.
- 23 (c) The court may consider the following factors as mitigating
 24 circumstances or as favoring suspending the sentence and imposing
 25 probation:
- 26 (1) The crime neither caused nor threatened serious harm to
 27 persons or property, or the person did not contemplate that it
 28 would do so.
- 29 (2) The crime was the result of circumstances unlikely to recur.
- 30 (3) The victim of the crime induced or facilitated the offense.
- 31 (4) There are substantial grounds tending to excuse or justify the
 32 crime, though failing to establish a defense.
- 33 (5) The person acted under strong provocation.
- 34 (6) The person has no history of delinquency or criminal activity,
 35 or the person has led a law-abiding life for a substantial period
 36 before commission of the crime.
- 37 (7) The person is likely to respond affirmatively to probation or
 38 short term imprisonment.
- 39 (8) The character and attitudes of the person indicate that the
 40 person is unlikely to commit another crime.
- 41 (9) The person has made or will make restitution to the victim of
 42 the crime for the injury, damage, or loss sustained.

C
o
p
y



(10) Imprisonment of the person will result in undue hardship to the person or the dependents of the person.

(11) The person was convicted of a crime involving the use of force against a person who had repeatedly inflicted physical or sexual abuse upon the convicted person and evidence shows that the convicted person suffered from the effects of battery as a result of the past course of conduct of the individual who is the victim of the crime for which the person was convicted.

(d) The criteria listed in subsections (b) and (c) do not limit the matters that the court may consider in determining the sentence.

(e) For the purposes of this article, the following crimes are considered sex crimes:

- (1) Rape (IC 35-42-4-1).
- (2) Criminal deviate conduct (IC 35-42-4-2).
- (3) Child molesting (IC 35-42-4-3).
- (4) Child seduction (IC 35-42-4-7).
- (5) Prostitution (IC 35-45-4-2).
- (6) Patronizing a prostitute (IC 35-45-4-3).
- (7) Incest (IC 35-46-1-3).
- (8) Sexual misconduct with a minor under IC 35-42-4-9(a).

(f) For the purposes of this article, the following crimes are considered offenses related to controlled substances:

- (1) Dealing in or manufacturing cocaine, a narcotic drug, or methamphetamine (IC 35-48-4-1).
- (2) Dealing in a schedule I, II, or III controlled substance (IC 35-48-4-2).
- (3) Dealing in a schedule IV controlled substance (IC 35-48-4-3).
- (4) Dealing in a schedule V controlled substance (IC 35-48-4-4).
- (5) Possession of cocaine, a narcotic drug, or methamphetamine (IC 35-48-4-6).
- (6) Possession of a controlled substance (IC 35-48-4-7).
- (7) Dealing in paraphernalia (IC 35-48-4-8.5).
- (8) Possession of paraphernalia (IC 35-48-4-8.3).
- (9) Offenses relating to registration (IC 35-48-4-14).

(g) For the purposes of this section, a person received risk counseling if the person had been:

- (1) notified in person or in writing that tests have confirmed the presence of antibodies to the human immunodeficiency virus (HIV) in the person's blood; and
- (2) warned of the behavior that can transmit HIV.

SECTION 2. IC 35-38-1-8.7 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY

C
O
P
Y



1, 2004]: Sec. 8.7. (a) A prosecuting attorney may prepare a neighborhood impact statement to be submitted to a sentencing court in a prosecution involving a controlled substance offense under IC 35-48-4.

(b) A neighborhood impact statement must contain information concerning how the controlled substance offense has affected the quality of life in the neighborhood in which the controlled substance offense occurred.

(c) A neighborhood impact statement submitted to a sentencing court under this section must include the following information:

(1) A summary of the financial, emotional, and physical effects of the controlled substance offense experienced by persons residing or conducting business within the neighborhood.

(2) Any written statements submitted to the prosecuting attorney's office by a person residing or conducting business within the neighborhood.

SECTION 3. [EFFECTIVE JULY 1, 2004] IC 35-38-1-7.1, as amended by this act, applies only to controlled substance offenses committed under IC 35-48-4 after June 30, 2004.

C
o
p
y

